



Instructions for Submitting the Contractor's Utilization Plan (Form BDC 328)

1. Contractors are required to submit a Contractor's Utilization Plan on Form BDC 328 (hereinafter referred to as the "Plan") to the NYS Office of General Services (OGS) within seven (7) calendar days after the opening of bids for construction contracts exceeding \$100,000. Failure to submit the Utilization Plan or to obtain a waiver could result in non-award of the contract. Complete *all* items on the form with the exception of the sections marked "For OGS Use Only". List *certified* MBE/WBE firms only. Only MBE/WBE firms certified by Empire State Development's Division of Minority and Women's Business Development can be used to meet MWBE good faith efforts participation goals on this contract. The use of non-certified firms that have submitted applications for certification but are not approved prior to completion of this contract are not acceptable for goal attainments. Contractors agree that OGS may withhold payment pending receipt of the required documentation. Please check box for any tiered subcontractor relationship.

Submit the completed Plan to:

NYS Office of General Services
Design and Construction
Office of Business Diversity
29th Floor, Corning Tower, Empire State Plaza
Albany, NY 12242
Phone: (518) 486-9284
Fax: (518) 486-9285

2. Contractors must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the contract and ensure that the MWBEs utilized under the Contract perform commercially useful functions. For guidance on how OGS will determine a contractor's "good faith efforts," refer to 5 NYCRR §142.8. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com>, *For additional information regarding this directory, please call The Empire State Development Corporation at (212) 803-2414 (Downstate) or (518) 292-5250 (Upstate)*. Additionally, you may contact the OGS OBD Designated Contacts at (518) 486-9284 which will, upon request, provide you with a listing of certified MBE/WBE firms in the Counties and under the Trades requested.
3. Where OGS determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the OGS liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.
4. OGS will review the submitted Utilization Plan and advise Contractor of OGS' acceptance or deficiency within twenty (20) days of its receipt. Contractor shall respond to the notice of deficiency within nine (9) calendar days of receipt by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify Contractor and direct Contractor to submit, within seven (7) calendar days, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal. The approved Utilization Plan will be posted on the OGS website within ten (10) days of Contract Award.
5. Any changes to the Plan must be approved by OGS.
6. Contractors are required to report monthly MWBE contractor compliance to OGS during the term of the contract for the preceding month's activity, documenting the progress made towards achievement of the MWBE goals of the Contract. Utilize the New York State Contract System located at <https://ny.newnycontracts.com> to report MWBE payments on a monthly basis. If Contractor is unable to report MWBE compliance via the NYSCS, Contractor must submit Contractor's Monthly Payment Report on Form BDC 58 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to:

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GNARESP, Corning Tower, 29th Floor
Albany, NY 12242